

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-732

LOBBYING FOR LEGISLATION

ISSUE

May a judge participate as a member of a citizens' group that lobbies for legislation mandating the placement of seat belts on school buses? **Answer:** No, such lobbying would cast doubt on the judge's capacity to decide impartially issues that come before him.

FACTS

The judge proposes to participate as a member of a citizens' group that lobbies for legislation mandating the placement of seat belts on school buses. The judge is a member of the Court of Civil Appeals. The group is one of concerned parents, currently without formal organization. The judge does not anticipate that participation would entail a time commitment that would interfere with his judicial duties. He expects his involvement to primarily be as a concerned parent, which may entail some personal lobbying activity.

DISCUSSION

The issue presented is governed primarily by Canon 4:

A judge may engage in activities to improve the law, the legal system, and the administration of justice.

A judge, subject to the proper performance of his judicial duties, may engage may engage in the following quasi-judicial duties, if in so doing he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Under Canon 4, a judge may communicate with members of the legislature concerning the law, the legal system, and the administration of justice only if the judge's activities do not interfere with the proper performance of judicial duties or cast doubt on the judge's capacity to decide impartially any issue that may come before him. Judicial participation in a group that engages in advocacy toward the adoption, repeal, or modification of particular substantive laws creates a danger that the judge's ability to act impartially may be cast in doubt.

Whenever a group engages in advocacy regarding substantive legal issues, participation by a judge should be carefully scrutinized. Factors that should be considered include: 1) the extent of the group's involvement in political or advocacy activities, 2) the extent to which the group is perceived by the public as engaging in such activities, 3) the size and public prominence of the organization, 4) whether issues of concern to the group are likely to come before the judge's court, 5) whether the group is concerned with procedural or substantive

changes in the law or its application, 6) whether the judge would be participating in a policy-making position, and 7) the fund-raising activities in which the group will be engaged. No one or combination of these factors is necessarily determinative. Ultimately, the question is whether the judge's participation is likely to lead to a perception that the judge's impartiality in administering the law may be questioned. California Judges Association Committee on Judicial Ethics, Opinion No. 46.

The propriety of the judge participating in the particular organization in question in this case is a very close question. However, in the opinion of the Commission, a member of the Court of Civil Appeals may not participate as a member of a group that lobbies for legislation mandating seat belts on school buses. Because related issues are likely to come before the judge, such lobbying would call into question the judge's ability to decide impartially issues that come before him.

The lobbying activity in this case is distinguishable from the activity that was in question in Advisory Opinions 85-244 and 86-257. In those opinions, the Commission advised judges that they could appear in a public service announcement encouraging parents to use seat belts for their children and a seat belt safety program. As the

Commission observed in those opinions, those activities were designed to promote compliance with existing law. The activity currently proposed seeks to change the law through participation in an organization with a narrow advocacy function.

REFERENCES

Alabama Advisory Opinions 85-244, 86-257.

Alabama Canons of Judicial Ethics, Canon 4.

California Judges Association Committee on Judicial Ethics, Opinion No. 46.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.